IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 998 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NACHIKETA KELAVANI MANDAL & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR VH DESAI for Petitioner(s) : 1 - 2.
MR SIRAJ GORI, AGP for Respondent(s) : 1,,
MR HARSHIT S TOLIA for Respondent(s) : 2 - 3.
MR DEEPAK DAVE, FOR MR AD OZA for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 26/07/2006

ORAL JUDGMENT

1. Rule. Learned AGP Shri Gori waives service of notice of rule on behalf of respondent No.1, learned advocate Shri Tolia waives service of

notice of rule on behalf of respondents Nos.2 & 3 and learned advocate Shri Deepak Dave waives service of rule on behalf of respondent No.4. At the joint request of the learned advocates appearing for the parties, the petition is taken up for final disposal today.

2. The petitioners have in the present petition challenged an order dated 24th August 2005 passed by the State Government.

3. Petitioner No.1 Trust runs a higher secondary school at village Unchadi, Taluka Talaja, Dist: Bhavnagar. The petitioners object to the State Government granting permission to respondents Nos.2 & 3 to start higher secondary classes in their school

4. Initially, the application of respondents Nos.2 & 3 was rejected by respondent No.4 Board by the order dated 5.5.2005 in which detailed reasons were given. It was observed that granting permission to respondents Nos.2 & 3 would violate regulations 9(15) and 9(16) of the Gujarat Secondary Education Regulations. The said respondents, however, preferred appeal to

the State Government which came to be allowed by the impugned order dated 24th August 2005.

5. Having heard the learned advocates appearing for the parties, I find that the petitioners had raised objection regarding respondents Nos.2 & 3 being granted permission to start standard 11 and 12 classes in their school. The case of the petitioners is that the school run by respondents Nos.2 & 3 is situated at a distance of about 5 k.m. from that of the petitioners' school. Considering the distance between the schools as also the population of the area, granting permission to start classes in the higher secondary section to respondents Nos.2 & 3 would lead to unhealthy competition. The Board in fact accepted the objections of the petitioners. The State Government, however, in appeal without hearing the petitioners reversed the order of the Board and granted permission to respondent Nos.2 & 3.

6. I also find that though elaborate reasons were given by the Board to refuse permission to respondents Nos.2 & 3, the State Government in

the impugned order briefly stated that no unhealthy competition is likely to ensue. I find that in the facts of the present case, the issues require reconsideration at the hands of the Government.

7. In the peculiar facts of the present case, the petitioners also be granted hearing. Their objections will be taken into consideration by the State Government and a fresh decision in this regard will be taken unmindful of the earlier order dated 24.8.2005. Since respondent Nos.2 & 3 have already started classes of 11 and 12 standards under the said order, until such time the State Government passes a fresh order, the said respondents may continue to enjoy the benefit of the order of the State Government. The entire exercise may be concluded expeditiously preferably within a period of four months from the date of receipt of a copy of this order. With these directions, the petition is disposed of. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)